No. 08 935

In The

Supreme Court of the United States

WILLIAM JERALD COOK,

Petitioner,

v.

GEORGIA SUPREME COURT, GEORGIA BAR ASSOCIATION, THE GEORGIA BAR ASSOCIATION BOARD TO DETERMINE FITNESS,
and
SPECIAL HEARING OFFICER S.DAVID SMITH,

Respondents.

On Petition For A Writ Of Certiorari To The Georgia Supreme Court

---

PETITION FOR A WRIT OF CERTIORARI

Concerning denial of an
Application for Fitness to Practice Law

WILLIAM JERALD COOK
Pro Se Petitioner
4580 Hubert Martin Rd.
Cumming, GA. 30028
(770) 889-2391

QUESTIONS PRESENTED

Whether the Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer, redacted, skewed, and misquoted testimony in order to violate the rights of the petitioner in an unlawful manner?

Whether the Georgia Supreme Court, Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer, used and is using ambiguous rules to conspire to violate the rights of the petitioner in an unlawful manner?

Whether, on Constitutional or other grounds, the Georgia Supreme Court's judicial decision in this particular case has resulted in the unlawful denial of certification of fitness for admission to a particular bar applicant, the petitioner?

Whether the Georgia Supreme Court's refusal to state specific grounds for denial of petitioner's

certificate of fitness to practice law violates the rights of the petitioner in such a manner as to be unlawful?

Whether the Georgia Supreme Court's definition of rehabilitation is so ambiguous as to lend itself to unlawful interpretation in order to deny petitioner's certificate of fitness to practice law?

Whether, the petitioner has a right to practice law, absent specificity by the Georgia Supreme Court, Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer, as to reasons for a denial of a certificate of fitness showing petitioner fails to meet the standards?

Whether the Georgia Supreme Court's refusal to designate exactly what "other" factors led to its refusal to grant petitioner's certificate of fitness denied petitioner his due process rights?

Whether the Georgia Supreme Court's denial of certification as fit to practice law violates petitioner's

equal protection rights guaranteed by the Fourteenth Amendment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES cont.

Constitutional Provisions

Statutes

Rules

Other Authorities

The Petitioner, William Jerald Cook, request that this Court issue a Writ of Certiorari to review the judgement of the Georgia Supreme Court, entered in the case, IN RE: Application of WILLIAM JERALD COOK, Georgia Supreme Court, Number S08Z0218, entered October 6, 2008, unless the Georgia Supreme Court issues Petitioner a certificate for fitness to practice law. Petitioner is Pro Se in this proceeding.

OPINIONS BELOW

The Georgia Bar's Board to Determine Fitness, (hereinafter "Board") tentatively denied Petitioner's application for a certificate of fitness to practice law after a June 2005, informal hearing, citing Petitioner's 1986 felony conviction and lack of candor in his 2000/2001 application for certification. Nothing was stated about Petitioner's 2005 application. The Petitioner requested a formal hearing.

The Supreme Court of Georgia appointed S. David Smith, an attorney in Rome, Georgia, as special hearing officer, (hereinafter "Hearing Officer"), for the formal hearing. After the hearing, both sides submitted proposed orders. S. Smith adopted the order of the Board's attorney in toto and signed it on June 13, 2007.

On October 6, 2008, the Georgia Supreme Court, in the case of IN RE: Application of WILLIAM

JERALD COOK, Georgia Supreme Court, Number S08Z0218, affirmed S. Smith and the Board's ruling.

On October 10, 2008, Petitioner filed a Motion that the Georgia Supreme Court reconsider its ruling or clarify the holding of October 6, 2008. On November 3, 2008, the Georgia Supreme Court denied the Motion with no explanation or clarification.

JURISDICTION

This Petition for Writ of Certiorari is based upon Petitioner's allegation of conspiracy to violate the rights of the Petitioner under color of law and failure to afford the Petitioner the right of due process and equal protection under the law, thus denying him the right to practice law.

This petition for certiorari is filed within ninety days of the Georgia Supreme Court's ruling of November 3, 2008 and is therefore timely. Sup. Ct. R. 13.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V: Due Process of Law.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV Section 1. Due Process and Equal Protection.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein

they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

GEORGIA STATUTES INVOLVED

15-19-31 Rules for organization and government of bar.

"The Supreme Court shall have the authority by appropriate orders, upon recommendation made by the State Bar of Georgia, to adopt rules and regulations for the organization and government of the unified state bar and to define the rights, duties, and obligations of the members therein, including the payment of a reasonable license fee, and otherwise to regulate and govern the practice of law in this state, to the end that the unified state bar shall promote the

best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice."

17-7-95 Plea of nolo contendere.

"(a) The defendant in all criminal cases other than capital felonies in any court of this state, whether the offense charged is a felony or a misdemeanor, may, with the consent and approval of the judge of the court, enter a plea of nolo contendere instead of a plea of guilty or not guilty.

(b) Should the judge allow a plea of nolo contendere to be entered, he shall thereupon be authorized to impose such sentence as may be authorized by law as to the offense charged.

(c) Except as otherwise provided by law, a plea of nolo contendere shall not be used against the defendant in any other court or proceedings as an admission of guilt or otherwise or for any purpose; and

the plea shall not be deemed a plea of guilty for the purpose of effecting any civil disqualification of the defendant to hold public office, to vote, to serve upon any jury, or any other civil disqualification imposed upon a person convicted of any offense under the laws of this state. The plea shall be deemed and held to put the defendant in jeopardy within the meaning of Article I, Section I, Paragraph XVIII of the Constitution of this state after sentence has been imposed."

SUPREME COURT OF GEORGIA RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW INVOLVED

PART A. Section 7. Informal Conferences, Permissive Withdrawal of Applicants, Reapplication.

"(a) If, during the investigation of an applicant,

information is obtained which raises a question as to the applicant's character or fitness to practice law, the Board may require the applicant to appear, together with his or her counsel if he or she so desires, before the Board or any designated member for an informal conference concerning such information.

(b) If, after such a conference, the Board believes that certification of fitness to practice law would be inappropriate, it may, in lieu of denying certification, permit the applicant to withdraw his or her application upon the understanding that after a period of rehabilitation, to be no less than three years, it will accept a new application from the applicant, if it is accompanied by the appropriate initial filing fee."

PART A. Section 8. Hearings

"(a) Prior to finally determining that an applicant shall not be certified as fit to practice law in this state, the Board shall notify the applicant by

certified mail that it has entered a tentative order of denial of his or her Application for Certification and advise the applicant of his or her right to a formal hearing with respect to the reasons for the Board's tentative denial. Within ten business days of receipt of this notice, the applicant shall file his or her written request for a formal hearing with the Office of Bar Admissions. If no request is filed within ten business days, the Board's tentative order shall become final and non-appealable. If a request is filed, the Board shall prepare specifications of the reasons for the Board's tentative order and mail them by certified mail to the applicant. Within 20 days of receipt of the specifications the applicant shall file his or her answers thereto, and if any specification is not denied, it shall be deemed to have been admitted. In addition to answering the specifications, the applicant may assert any affirmative defenses he or she may have

and/or any matters in mitigation he or she may wish to have considered. The hearing may be held before a single attorney member of the Board appointed by the chair or before the Board as a whole or before a member of the State Bar of Georgia appointed as hearing officer by the Court at the Board's request. The applicant may be represented by counsel, and the hearings shall be reported and transcribed by a certified court reporter.

(b) Witnesses may be subpoenaed by the Board and shall be subpoenaed by the Board upon the applicant's request as in civil cases in state courts of record. In case of a refusal of a witness to attend the hearing, to produce documentary or other evidence or to testify, the Board shall certify the failure to the Court, and the witness shall be dealt with as for a contempt. Witnesses shall be entitled to receive the fees and mileage provided for by law for witnesses in

civil cases.

(c) Prior to the hearing, written interrogatories may be served upon any witness not within the state of Georgia. The answers to the written interrogatories and any exhibits submitted with them shall be admissible as evidence at the hearing. At the hearing, the hearing officer shall not be bound to strictly observe the rules of evidence but shall consider all evidence deemed relevant to the specifications and the answers, affirmative defenses and matters in mitigation raised by the Board and the applicant in an effort to discover the truth without undue embarrassment to the applicant; provided, however, the Board's investigatory file with respect to matters not placed in issue by the specifications, answers, affirmative defenses and matters in mitigation shall not be subject to discovery or introduction into evidence. The hearing officer shall make written

finding of facts and recommendations to the Board, which, however, shall not be binding upon the Board.

(d) If after review of the recommendations of the hearing officer the Board determines not to certify the applicant as fit to practice law in Georgia, it shall so notify the applicant in writing by certified mail giving its reasons for its decision."

STATEMENT OF THE CASE

Petitioner applied for fitness to sit for the Georgia bar exam, in 2000, and was tentatively approved, but the Board, requested an informal hearing, held in 2001. After the hearing, in which Petitioner was not candid, he was denied and requested a formal hearing. The 2001 special hearing officer recommended disapproval, citing his 1986 Alaska felony conviction, and his lack of candor with the Board. The Board subsequently issued a ruling denying his application.

In January 2005, Petitioner again applied for fitness and was tentatively denied. He requested an informal hearing,[1] which was held June 2005, after which Petitioner was again denied, citing his prior conviction and his lack of candor in 2001. Petitioner, asked for a formal hearing, which was held November 30, 2006, a year and five+ months after the informal hearing. June 13, 2007, almost seven months later, the Hearing Officer deleted the word "proposed," changed the date, and signed the order submitted by counsel for the Board. This Order recommended disapproval, citing his felony conviction, and lack of candor in 2001. The Order submitted by counsel for the Board also said Petitioner had lied in his 2005, application, and was lying at the hearing. The Order

---

1 Petitioner attended the informal hearing along with his counsel, as allowed by the Bar rules. When Counsel asked to be heard, the Board refused to let Counsel speak.

stated little about Petitioner's rehabilitative efforts, only citing his involvement in church, and working the polls. The proposed/ultimate Order signed by the Hearing Officer also contained numerous inaccurate, misquoted, skewed, and redacted statements.

QUESTIONS PRESENTED

Whether the Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer, redacted, skewed, and misquoted testimony in order to violate the rights of the petitioner in an unlawful manner?

In January 2005, Petitioner applied for a Certificate of Fitness to practice law in the State of Georgia, admitting his lies to North Georgia College and the Board in his 2000/2001 application, and his lie to get out of prison. He was tentatively denied. Petitioner requested an informal hearing, attended by

his attorney[2] (who was refused the opportunity to speak or ask questions). The Board ask no questions about his conviction, only his 2001 and North Georgia College lies. He was again denied by the Board, citing his prior conviction and lack of candor in 2000/2001. Nothing was said or asked about his January 2005 application. Petitioner, asked for a formal hearing, which was held November 2006. After the hearing, Petitioner was given 30 days in which to submit his Findings of Fact and Conclusion of Law, and a Proposed Order, with the Board having 30 days to respond and submit a Proposed Order.

---

2 The Supreme Court of Georgia Rules Governing Admission tothe Practice of Law, Part A. Section 7. Informal Conferences, Permissive Withdrawal of Applicant, Reapplication. (a) states in pertinent part,". . . the Board may require the applicant to appear, together with his or her attorney if he or she desires before the Board . . .."

Seven months after the formal hearing, the Hearing Officer, deleted the word "proposed", changed the date, and used the Order, in toto, submitted by counsel for the Board. The proposed/ultimate Order signed by the Hearing Officer had a number of misstatements, misquotes, redacted statements, and skewed words. To wit:

The Order says "Petitioner's step-daughter stated that Petitioner did nothing wrong in regards to the charges of sexual abuse." The (unsworn) letter instead, says Petitioner did not sexually abuse her. Her second (unsworn) letter is not quoted at all. All Counsel for the Board stated is that Petitioner requested his step-daughter write the letter. But the letter states she hopes Petitioner will "receive justice."[3]

---

3 While petitioner had asked his daughter to write a letter, he was never informed of a letter actually being written. Neither Petitioner, nor his counsel had these letters prior to 2001. And

The Board's counsel states Petitioner was denied a pardon. While true, the Order fails to state that Alaska doesn't give pardons to anyone convicted of a sex offense, or that under Alaska Law, once a person completes their sentence, their rights are automatically restored.

The Order says at Petitioner's 2001 formal hearing Petitioner "complained he had been ambushed by the Board at the informal hearing because it questioned him about the 'Jenny' story." Again only partially true. Petitioner expressed concern he wasn't given notice about the Jenny issue before the hearing

---

only learned of their existence once they were produced by the Board. Yet the Board's attorney alleged the existence of the letters proved Petitioner had lied during the 2005 application, when Petitioner said he had no proof of his innocence prior to his daughter's sworn affidavit being written when applying to North Georgia College.

and therefore was surprised. He did unfortunately use the word "ambush" to describe his surprise. However the Order doesn't state that in the 2001 hearing, Judge Majette, was also surprised Petitioner had not been told the hearing would be aimed at the North Georgia College statement.

The Order says, Petitioner wrote a letter stating he "continually denied guilt in [his] underlying conviction." Instead he wrote a letter that says he contested his guilt, through the proffer of his daughter's sworn statement, and that since he had "got[ten] out of prison and off parole" he "continually denied" his guilt.

The Order does not completely state Petitioner's evidence of rehabilitation and involvement in the community. It only says, "At the formal hearing, Petitioner produced evidence to show involvement in church activities, community activities, and volunteer

work. Specifically, he regularly attends church, is the treasurer of his church's men's group, volunteers with church activities, and works as a poll worker during elections." However the evidence of rehabilitation and involvement in the community is far more extensive than just church and poll working.

The Order states "Mr. Bailey explained that he believed there was nothing that Mr. Cook would not do for him." Insinuating Petitioner would lie for Bailey. Yet Bailey never even hinted Petitioner would lie for him.

The Order misstates Attorney, Rev. Dennis Bottoms', testimony, by stating, "Mr. Bottoms acknowledged that Mr. Cook had lied in difficult situations in the past." Bottoms actually said, "I'd (sic) seen anything in Petitioner's behavior that would suggest he is not a (sic) good character." Bottoms went on to state, when asked about Petitioner lying, he "did

not feel that what he [Petitioner] did on the application [referring to the 2000/2001 application] was indicative of his character. In other words, I'm not - - I don't think he is a liar in the sense that that's a practice that is part of his character." When the Board's attorney did not like the answer Bottoms gave in stating he did not believe Petitioner's untruthfulness in the past would harm his clients if certified, she tried to imply that Attorney Bottoms was foregoing his attorney ethics because he was Petitioner's "pastor" and a "Christian", when Bottoms said Petitioner should be certified.

The Order says Ruby Cook, "stated that she did not know if her son would lie to protect clients." When the actual answer to whether Petitioner would lie to protect clients, was, "I don't know. I don't think he would." And when asked again, she stated, "No, I really don't, [think he would lie for a client]."

The Order states Petitioner was belligerent when answering questions. But the Order fails to state he was answering the same question over and over, ad nauseam. When the Hearing Officer allowed the same question over and over, Petitioner became agitated that the hearing seemed to turn from truth seeking, to an attempt to stretch the truth into a lie.[4]

The Order states his "obviously biased character witnesses [] stated that he has demonstrated a pattern of lying in difficult situations and that he might lie for a client." When, as stated before, Petitioner's

---

4 The Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Part A. Section 8 (c) States in pertinent part, "At the hearing, the hearing officer shall not be bound to strictly observe the rules of evidence but shall consider all evidence deemed relevant to the specifications and the answers, affirmative defenses and matters in mitigation raised by the Board and the applicant in an effort to discover the truth without undue embarrassment to the applicant . . .."

character witnesses stated just the opposite.

The Order using the stretched allegation of a lie states, "Most disturbingly, Mr. Cook has lied to the Board to Determine Fitness during both application processes."[5] Little is mentioned about Petitioner's 2005 application other than the alleged a lie.

The Board's Proposed Order was signed by the Hearing Officer, in toto, without correcting the discrepancies, misquotes and exaggerations put there by the Board's counsel, or acknowledgment of

---

5 Counsel for the Board alleged that two unsworn letters and the transcript of the trial was proof of Petitioner's innocence, alleging Petitioner had them. When as stated above, Petitioner did not have the letters or transcript upon which this assertion is based. Nor did Petitioner even know of the existence of the letters prior to them being produced by the Board. In addition this Court must remember Petitioner was convicted at trial, so, How could the transcript have been beneficial?

Petitioner's rehabilitation evidence, except for church and the polls.

Whether the Georgia Supreme Court, Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer, used and is using ambiguous rules to conspire to violate the rights of the petitioner in an unlawful manner?

The cases cited to deny certification to the Petitioner are ambiguous at best, and at worst are a way to deny anyone certification for a plethora of reasons. In re Application for Certification for C.R.W., 267 Ga. 534, 481 S.E.2d 511, 513, (1997), states, "Because the Board to Determine Fitness and this court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant and in favor of protecting the public." To use this standard

means anyone of the Board, Georgia Supreme Court, Hearing Officer, need only express "any" concern, and that is grounds for denying a fitness certificate. Indeed that is what has happened. The Georgia Supreme Court, in its ruling of October 6, 2008 states;

> "Although Cook has made some admirable efforts to rehabilitate his life since he was convicted of certain crimes in 1986, the record also shows that he misrepresented the circumstances of the crime when he was in prison in order to obtain an early release, that he misrepresented the circumstances of the crime when he applied to college in 1993, and that he again misrepresented the circumstances of the crime when he first applied for certification of fitness to practice law. These factors, along with others, lead us to conclude that Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and moral fitness to practice law." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2 Para. 2.

The natural questions that follow are, What are the "other" factors? Can the Petitioner overcome

them? Were they addressed in his questioning? Did he fail to do something or do something he shouldn't have? Can he confront the issues or will they be used to deny him in the future? Is this the "any" concern spoken of in In re C.R.W., 481 S.E.2d 511? This is actually what the Petitioner asked in his October 10, 2008, Motion to Reconsider or Clarify the Georgia Supreme Court's decision, that the Georgia Supreme Court denied.

In addition the Georgia Supreme Court has imposed a requirement that anyone convicted of a crime must reestablish their reputation stating very little about how that is to be done. "Where an applicant for admission to the bar has a criminal record, his or her burden of establishing present good moral character takes on the added weight of proving full and complete rehabilitation subsequent to conviction, and it is only fitting that proof of

rehabilitation be by clear and convincing evidence." In re Application of CASON, 294 S.E.2d 520, 522 (1982). The Georgia Supreme Court barely recognizes the Petitioner's efforts when it states, "Although Cook has made some admirable efforts to rehabilitate his life since he was convicted of certain crimes in 1986 [. . .] Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and moral fitness to practice law. IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2 Para. 2. This is borne out in the Order submitted by the Board's attorney and signed by the Hearing Officer.

Thus, any time the Board has a feeling, valid or not, that an applicant doesn't meet their undelineated standard of satisfaction, they can deny certification. The only clear cut guidelines given, are that those who

are convicted of a crime "bear the burden" of showing they have "reestablished their reputation as a person and evidence a restoration to a useful and constructive place in society." And that the "primary responsibility is to the public to see that those who are admitted to practice are ethically cognizant and mature individuals who have the character to withstand the temptations which are placed before them as they handle other people's money and affairs." In re Application of CASON, 294 S.E.2d 520, 523. Yet, Cason does not state a bright line rule as to what one who is convicted a crime, or has lied, must do to reestablished their reputation as a person and evidence a restoration to a useful and constructive place in society, except to say that it is the applicant's burden to satisfy the Board. This leaves the Georgia Supreme Court, Board, and Hearing Officer without a clear cut standard, that allows them to deny almost

anyone that has ever been convicted or lied, for almost any reason, as they have done here. How does one bear a burden that is unknown?

Based on Constitutional or other grounds, whether the Georgia Supreme Court's judicial decision in this particular case has resulted in the unlawful denial of certification of fitness for admission to a particular bar applicant, the petitioner?

A United States Supreme Court decision adopted by the Georgia Supreme Court has already ruled there is a "right" to practice law, absent a showing Petitioner fails to meet the standards. That showing must rationally relate to the standard in question. Citing Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, (1963), the Georgia Supreme Court stated, "The requirements [ ] are that the qualification standard in issue have a

rational connection with the applicant's fitness to practice law and (2) that there must be an adequate basis for the finding that the applicant fails to meet the standard. In other words, the right to practice law is not extended by the states as a matter of grace and favor." In re BEASLEY, 252 S.E.2d 615, 616, (1979). In short, once Petitioner files his application, he need not beg the State's "grace and favor" to practice. Petitioner has a right to practice, absent a showing of a rational relationship to any concern the Georgia Supreme Court/Georgia Bar/Board/Hearing Officer raises as a reason to deny certification. However, the Rules in Georgia have been reversed, in contradiction of both WILLNER and BEASLEY stating that it is a Petitioner's responsibility, throughout Certification process, to prove they are fit.

"The issue presented is justiciable. 'A claim of a present right to admission to the bar of a state and a

denial of that right is a controversy.' (Cite omitted) Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law.

A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Willner v. Committee on Character and Fitness, 373 U.S. 96, 102, 83 S.Ct. 1175. The only difference between Willner and the Petitioner is Willner had been admitted, as a CPA, to practice before the Tax Court and the Treasury Department since 1928. However, Willner is adopted in Beasley, where an applicant was seeking certification. Thus the Georgia Supreme Court has, by reference, adopted the fact that the practice of law is a right that cannot be interfered with unless due process and equal

protection are afforded, which will be addressed later.

Whether the Georgia Supreme Court's refusal to state specific grounds for denial of petitioner's certificate of fitness to practice law violates the rights of the petitioner in such a manner as to be unlawful?

The Petitioner has a right to confront and question the evidence used to deny him certification. "We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood" Willner v. Committee on Character and Fitness, 373 U.S. 96, 97, 103 83 S.Ct. 1175. Thus unless the Georgia Supreme Court publishes what "other" " factors," "lead [them] to conclude that Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and

moral fitness to practice law." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2, Para. 2, the Georgia Supreme Court has failed to insure that the Petitioner was afforded full due process of confrontation and examination of the "other" factors. Can Petitioner ever overcome the factors? If so, what must he do?

Whether the Georgia Supreme Court's definition of rehabilitation is so ambiguous as to lend itself to unlawful interpretation in order to deny petitioner's certificate of fitness to practice law?

The Supreme Court has delegated investigation and promulgation of rules to investigate bar applicants to the Bar and Fitness Board, through O.C.G.A. § 15-19-31, which states in pertinent part:

> "The Supreme Court shall have the authority by appropriate Orders, upon recommendation made by the State Bar of Georgia, to adopt rules and regulations for

> the organization and government of the unified state bar and to define the rights, duties, and obligations of the members therein, . . ., and otherwise to regulate and govern the practice of law in this state, to the end that the unified state bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession . . .."

However it is still the responsibility of the Georgia Supreme Court to insure such guidelines are clear and being followed. This leads to the problem of delineating what the Georgia Bar/Board is to consider and not consider. The Georgia Supreme Court has been less than clear on the guidelines and even blurred any lines that were in place. On one hand the Georgia Supreme Court has set out guidelines such as in the case of In Re Lee, 571 S.E.2d 720, in which the Georgia Supreme Court states that if a person has a criminal record, they must prove by clear and convincing evidence that, after conviction the person

has fully and completely rehabilitated himself. This is a restatement of the Georgia Supreme Court/Georgia Bar/Board's favorite case, "Where an applicant for admission to the bar has a criminal record, his or her burden of establishing present good moral character takes on the added weight of proving full and complete rehabilitation subsequent to conviction, and it is only fitting that proof of rehabilitation be by clear and convincing evidence." In re Application of CASON, 294 S.E.2d 520, 522. But again the question begs to be asked, What is "clear and convincing evidence."? When has one under this delineated disability reached the undelineated threshold? The Georgia Supreme Court in the Petitioner's case seems to only give lip service to Petitioner's attempts, by stating, "Cook has made some admirable efforts to rehabilitate his life since he was convicted of certain crimes . . ." IN RE William Jerald Cook, Georgia Supreme Court

On the other hand a practicing attorney, that plead no contest to suborning perjury of not one, but six witnesses, in Order to save his client from paying child support, which would have resulted in deprivation of the child, and did undermine the integrity of the judicial system, was reinstated, by Georgia Supreme Court Order, using signatures that he lied to get, after only two years suspension. If you include the fact that he represented to the trial Court that the suborned testimony was the truth, he actually lied seven times in order to short circuit the judicial process. In the Matter of Freeman MITCHELL, 290 S.E.2d 426, (1982).

Just what are the guidelines? Are they being applied unlawfully and unequally to one convicted person and not to another, the deciding factor being whether a licensed, practicing, attorney, who should

be held to a higher standard, and an applicant who was falsely accused, sitting in prison, and embarrassed, is less likely to violate the precept that the "bar holds that person out to the public as worthy of patronage and confidence." In re Application of CASON, 294 S.E.2d 520, 523.

Whether, the petitioner has a right to practice law, absent specificity by the Georgia Supreme Court, Georgia Bar Association's Board to Determine Fitness, and the Georgia Supreme Court's Special Hearing Officer as to reasons for a denial of a certificate of fitness showing that petitioner fails to meet the standards?

The Georgia Supreme Court through adopting the United States Supreme Court's, ruling in Willner v. Committee on Character and Fitness, 83 S.Ct. 1175, stated, "The requirements [ ] are that the qualification standard in issue have a rational

connection with the applicant's fitness to practice law and (2) that there must be an adequate basis for the finding that the applicant fails to meet the standard. In other words, the right to practice law is not extended by the states as a matter of grace and favor." In re BEASLEY, 252 S.E.2d 615, 616. Yet in order to deny certification the Georgia Supreme Court failed to specify exactly what gave it concerns, such that they refused to certify the petitioner. "These factors, along with others, lead us to conclude that Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and moral fitness to practice law." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2, Para. 2.

The Georgia Supreme Court/Georgia Bar/ Board/Hearing Officer, have never asked any

questions about the Petitioner's conviction during any hearing, but continue to use it as one of their reasons to deny him certification.

If the Petitioner has a "right" to practice law, shouldn't the Georgia Supreme Court have to delineate exactly why he is being denied that right? How can the Petitioner know what he needs to do, to overcome those unspecified factors in order to be certified?

Whether the Georgia Supreme Court's refusal to designate exactly what "other" factors led to its refusal to grant petitioner's certificate of fitness denied petitioner his due process rights?

The Petitioner has a right to confront and question the evidence used to deny him certification. "We have emphasized in recent years that procedural due process often requires confrontation and cross-

examination of those whose word deprives a person of his livelihood" Willner v. Committee on Character and Fitness, 373 U.S. 96, 97, 83 S.Ct. 1175. Thus unless the Georgia Supreme Court publishes what other factors concerned them and gives the Petitioner an opportunity to rebut them, the Petitioner has been denied due process.

Whether the Georgia Supreme Court's denial of certification as fit to practice law violates petitioner's equal protection rights as guaranteed by the fourteenth amendment?

The Fourteenth Amendment to the U.S. Constitution guarantees that,

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

The Georgia Supreme Court states it is concerned with the felony conviction of the Petitioner,[6] the petitioner's three lies, and some unspecified factors. It must be the unspecified factors that tilted the scale, due to the fact that the Georgia Supreme Court has already ordered the reinstatement of an attorney who plead nolo contendere to a felony, and it involved lies that he suborned along with lies to get him reinstated. In the Matter of Mitchell, 262 S.E.2d

---

6 No question has ever been asked about Petitioner's conviction in the nine-plus years he has been waiting for Certification, through two application processes. In Petitioner's first application, the Board stated they would ask no questions about the conviction, stating that even if guilty, Petitioner had exhibited the rehabilitation required under the CASON rule. Yet, it is used continually as a basis for denial when reported in the findings.

89 (1979), (the disbarment), In the Matter of Freeman MITCHELL, 290 S.E.2d 426, (1982) (the reinstatement). Yet, the Georgia Supreme Court states the reason they are denying certification is that Petitioner,

> "was convicted of certain crimes in 1986, the record also shows that he misrepresented the circumstances of the crime when he was in prison in Order to obtain an early release, that he misrepresented the circumstances of the crime when he applied to college in 1993, and that he again misrepresented the circumstances of the crime when he first applied for certification of fitness to practice law." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2 Para. 2.

Note there is nothing stated about his 2005 application, which is the second. Everything keeps relating to Petitioner's first 2000/2001application.

Mitchell plead nolo contendere to the crime of suborning perjury. To determine the importance of the Mitchell decision, since he maintained his innocence; First, we must determine what nolo

contendere actually means. Is it a lie if the person making the plea, really is, or feels he really is, innocent? According to Black's Law Dictionary, 6th Edition, 1048, nolo contendere is a "Latin phrase that means 'I will not contest it'; a plea in a criminal case which has a similar legal effect as pleading guilty." Black's, goes on to state, "[t]he principal difference between a guilty plea and a plea of nolo contendere is that the latter may not be used against the defendant in a civil action based upon the same facts." Note Black's does not say nolo contendere is not an admission of guilt. Georgia law goes a little further and says a plea of nolo "shall not be deemed a plea of guilty for the purposes of effecting any civil disqualification of the defendant . ." O.C.G.A. 17-7-95 (c). Note again however, even Georgia law stops short of saying the person is not guilty of the criminal offense charged.

Every attorney knows, and this Court has to agree, that a nolo contendere plea is in effect a guilty plea with advantages. Yet, Courts, even knowing a nolo plea is actually an admission with certain benefits attached, recognize persons may admit to a crime in order to avoid some consequence, such as embarrassment, or as in Mitchell's case to escape imprisonment and embarrassment, and later claim innocence.

The Georgia Supreme Court recognized Mitchell's actual guilt when it stated, "But for the infraction in this instance Mitchell's ethical standards were good . . ." In the Matter of Freeman MITCHELL, 290 S.E.2.d 426, 426. Note, Mitchell does not require a person to actually be innocent, or that others believe they are innocent. Also note that "But for the infraction in this instance," was the subornation of six witnesses' perjured testimony, not one.

Yet the Georgia Supreme Court would penalize the Petitioner because he lied in order to be released from prison and escape fellow prisoner abuse, for a crime he did not commit, he didn't want to admit to the crime in his application to college and was embarrassed when caught in the lie when he applied for his 2000/2001certification. Almost an exact parallel to Mitchell. Yet the Georgia Supreme Court alludes to some unspecified concerns.

Is the Georgia Supreme Court discriminating against a class within a class? Both the Petitioner and Mitchell were convicted a crime. Both told lies to escape imprisonment and embarrassment, both told lies during the application process for fitness. The only differences are that Petitioner was actually in prison and has yet to be admitted to the practice of law. In balance however, Mitchell was already a practicing attorney, and his lies (perjury) had nothing

to do with self preservation (except his lie to be readmitted), they instead would have deprived a deserving child the support that his/her parent should have been required to make. And, Mitchell didn't see a day of incarceration.

ARGUMENT

This Court has stated "'A claim of a present right to admission to the bar of a state and a denial of that right is a controversy.' (Cite omitted) Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law. A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Willner v. Committee on Character and Fitness, 373 U.S. 96, 103, 83 S.Ct. 1175.

The Georgia Supreme Court/ Board/Hearing

Officer have cited Petitioner's 1986 conviction as a reason to deny certification, yet it has never been asked about in a hearing. How can the issue be addressed if it is continually avoided by the Respondents, except as an afterthought as a reason to deny certification? In addition, the Board in Petitioner's first, 2000/2001, application for fitness informal hearing, said even though they might not like it, Petitioner had met the requirements of In re Application of CASON, 294 S.E.2d 520, showing rehabilitation to overcome his criminal conviction.

The attorney for the Board, and ultimately the Hearing Officer, took words out of context, redacted statements and gave incomplete and incorrect statements in order to state that Petitioner's witnesses said Petitioner would lie in the future. Even going so far as to appear to question the ethics of a respected, long time member of the Georgia Bar, when he didn't

answer the way the Board attorney wanted. Thus violating the rights of the Petitioner to have a full and honest hearing and have the facts accurately reported.

The Fifth and Fourteenth amendments to the United States Constitution guarantee that due process will be afforded to each and every person within a state, and that no laws will be promulgated that allow a violation of due process. Yet the Georgia Supreme Court has promulgated ambiguous and arbitrary laws through its rulings that abrogate the due process rights of an applicant for fitness. Furthermore, the Georgia Supreme Court refuses to tell Petitioner what "other" factors they considered in denying Petitioner's certification.

In addition the Fourteenth Amendment guarantees equal protection of the laws. It appears the Georgia Supreme Court has created a class within a class and is discriminating against that sub-class,

when it treats persons convicted of crimes differently just because one of the sub-classes is already a member of the Bar and the other sub-class is applying for membership in the Bar.

Finally, due process requires that the Georgia Supreme Court set down specific guidelines that an applicant may follow in order to overcome any perceived disabilities. To simply state "Where an applicant for admission to the bar has a criminal record, his or her burden of establishing present good moral character takes on the added weight of proving full and complete rehabilitation subsequent to conviction, and it is only fitting that proof of rehabilitation be by clear and convincing evidence." In re Application of CASON, 294 S.E.2d 520, 522, is not enough. Petitioner presented literally a mountain of evidence showing he has reestablished present good moral character and has returned himself to a

participating, responsible, respected, member of his community and society as a whole. Yet the Georgia Supreme Court says only "Cook has made some admirable efforts to rehabilitate his life . . ." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2 Para. 2, then goes on to say that the Petitioner has not shown enough. What is enough? Mitchell's proof of rehabilitation was that "At the time of the findings, Mitchell was 59 years old, and had practiced law in Atlanta 29 years prior to disbarment. He has been active in civic, church and family matters throughout the years. Numerous witnesses testified that his reputation was impeccable. Over 200 attorneys signed his petition for reinstatement. But for the infraction in this instance Mitchell's ethical standards were good during 29 years of practice." In the Matter of Freeman MITCHELL, 290 S.E.2.d 426, 426. Yet the Georgia Supreme Court said "We have

reviewed the record before us and agree with the Board that clear and convincing proof of rehabilitation and fitness have been shown." MITCHELL, at 427. The fact that he had been active in civic, church, and family matters throughout the years, is of little import. The Petitioner was also a participating, responsible member of society, to include civic, church, and family matters prior to his conviction. Petitioner continued to be involved while in prison, as much as possible, and returned to that lifestyle once he was released. He even continued to be a responsible citizen and member of society as a whole while incarcerated through his many community services, both inside and outside prison. Obviously the deciding factor is the prejudice that an active member of the Bar is held to a lower standard to show rehabilitation.

CONCLUSION

The Georgia Supreme Court/Georgia

Bar/Board/Hearing Officer, have violated the Petitioner's rights to due process and equal protection as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. At no time has Petitioner's conviction ever been discussed by the Board or any Hearing Officer, other than to state in Petitioner's first application for fitness informal hearing, Petitioner had "met the requirements of CASON," yet it continues to be used as a basis to deny Petitioner certification as fit. Further ,the Board refused to let Petitioner's attorney participate in the 2005 informal hearing. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Willner v. Committee on Character and Fitness, 373 U.S. 96, 102, 83 S.Ct. 1175.

The Hearing Officer let the 2005 formal hearing turn into a "witch hunt" in contradiction of Supreme Court of Georgia Rules Governing Admission to the Practice of Law, PART A Section 8(c) which states, in pertinent part,

> "At the hearing, the hearing officer shall not be bound to strictly observe the rules of evidence but shall consider all evidence deemed relevant to the specifications and the answers, affirmative defenses and matters in mitigation raised by the Board and the applicant in an effort to discover the truth without undue embarrassment to the applicant,"

Instead the Hearing Officer allowed this questioning to continue, which was obviously not a search for the truth. Then the Hearing Officer signed the Board attorney's proposed Order, in toto, with all the misstatements, misquotes, redacted statements, and skewed words intact. These misstatements, misquotes, redacted statements, and skewed words were placed there purposely to paint the Petitioner in

the worst light possible, as evidenced by the lack of mention of the mountain of evidence which Petitioner presented to show rehabilitation. Petitioner posits this as a conspiracy to violate his right to practice law as guaranteed by both Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, and In re BEASLEY, 252 S.E.2d 615.

Finally, the Georgia Supreme Court has violated Petitioner's Fifth and Fourteenth Amendment rights to due process and equal protection by; First, refusing to tell Petition what "other" factors led to its denial of his fitness certification, and Second, creating a class within a class and treating persons in that created class differently, with the apparent deciding factor being whether a person was already a licensed attorney or not. (See In the Matter of Freeman MITCHELL, 290 S.E.2d 426). Petitioner has never been told what "other" factors came into play nor

whether they can ever be overcome. "Procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood." Willner v. Committee on Character and Fitness, 373 U.S. 96, 97, 83 S.Ct. 1175. Willner even goes farther in the concurring opinion by MR. JUSTICE GOLDBERG, whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART, joined,

> "The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." Willner, 373 U.S. 96, 107.

The Georgia Supreme Court, after giving very little recognition to Petitioner's rehabilitative efforts, and using Petitioner's twenty-two+ year-old conviction and three lies, states, "These factors, along with

others, lead us to conclude that Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and moral fitness to practice law." IN RE William Jerald Cook, Georgia Supreme Court S08Z0218, Page 2 Para. 2.

For the reasons discussed above, Petitioner respectfully asks that this Court grant certiorari and resolve the important issues of law presented herein.

Respectfully submitted, this 13 day of JAN 2009.

William J. Cook, Pro Se
4580 Hubert Martin Rd.
Cumming, GA. 30028
(770)-889-2391

Appendix A

SUPREME COURT OF GEORGIA

OFFICE OF BAR ADMISSIONS

September 14, 2007

William Jerald Cook
4580 Hubert Martin Road
Cumming, Georgia 30040

Dear Mr. Cook:

The Board to Determine Fitness of Bar Applicants has considered the findings of fact and recommendation of the hearing officer, S. David Smith, Jr., with respect to your Application for Certification of Fitness to Practice Law. The Board has directed me to inform you that after reviewing the record, the transcript of the hearing and the recommendation of the hearing officer, it has decided that you not be certified as fit to

practice law, and yesterday the Board entered a formal order denying your application.

The Board's decision with respect to your application is final. However, you are advised that under the provisions of Part F, Section 7 **Rules Governing Admission to the Practice of Law** in Georgia, you may appeal the Board's decision to the Supreme Court of Georgia. If you decide to do so, you must file a written notice of appeal with the Office of Bar Admissions and with the Clerk of the Supreme Court within thirty (30) days of receipt of this letter. The clerk will docket the appeal and notify you of the docketing. Thereafter, you will have twenty (20) days in which to file an original and seven copies of your written argument in support of your appeal. You must also file a copy of your argument with the Office of Bar

Appendix A

Admissions and a copy with Rebecca Mick, Office of the Attorney General, 132 State Judicial Building, Atlanta, Georgia 30334.

Sincerely,

/s/ Sally E. Lockwood
Sally E. Lockwood
Director of Admissions

Certified Mail # 7001 1140 0000 0878 2481

cc: DeBrae C. Kennedy
Joshua J. Smith

Appendix B

In the Supreme Court of Georgia

Decided: October 6, 2008

S08Z0218. IN RE WILLIAM JERALD COOK.

Per Curiam.

William Jerald Cook appeals from the final decision of the Board to Determine Fitness of Bar Applicants denying his application for certification of fitness to practice law. For the reasons that follow, we affirm the Board's decision.

"Throughout the application process, the burden clearly rests upon the applicant to prove that he possesses the requisite character and moral fitness to practice law."[1] Here, because Cook has a criminal

---

1 In re Jenkins, 278 Ga. 529, 530-531 (603 SE 2d 218) (2004). Accord In the Matter of White, 283 Ga. 74, 75 (656 SE2d 527) (2008)

record, he must also prove by clear and convincing evidence that, after the conviction, he has fully and completely rehabilitated himself.[2] Moreover, "'[b]ecause the Board's and this Court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the applicant and in favor of protecting the public.'"[3]

Although Cook has made some admirable efforts to rehabilitate his life since he was convicted of certain crimes in 1986, the record also shows that he misrepresented the circumstances of the crime when he was in prison in order to obtain an early release, that he misrepresented the circumstances of the crime

---

2 In re Lee, 275 Ga. 763, 764 (571 SE2d 720) (2002)

3 Id. at 531 (quoting I 3 n re C.R.W., 267 Ga. 534, 535 (481 SE2d 511) (1997).

when he applied to college in 1993, and that he again misrepresented the circumstances of the crime when he first applied for certification of fitness to practice law. These factors, along with others, lead us to conclude that Cook has not carried his burdens to prove either that he has fully and completely rehabilitated himself since his conviction or that he has the requisite character and moral fitness to practice law.

For these reasons, we affirm the denial of Cook's application for certification of fitness to practice law. Decision affirmed. All the Justices concur.